Supreme Court, U.S.
FILED
AUG 23 1982
Alexander L. Stevas, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

RECEIVED
AUG 25 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 82-5280

ROBERT WILLIAM STRICKLAND,

Petitioner,

v.

WALTER D. ZANT, Warden,
Georgia Diagnostic and
Classification Center,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF BUTTS COUNTY, GEORGIA

Millard C. Farmer
Joseph M. Nursey
COUNSEL FOR PETITIONER

15 Peachtree Street
Suite 831
Atlanta, GA 30303
(404) 688-8116

TABLE OF CONTENTS

Table of Authorities.....ii

Citations to Opinions Below.....1

Jurisdiction.....2

Constitutional and Statutory Provisions Involved.....2

Question Presented.....2

How the Issue Was Raised Below.....2

Statement of the Case.....3

Reason for Granting the Writ.....4

The State trial court's charge to the jury at the guilt/innocence phase of Petitioner's trial violated Petitioner's Fourteenth Amendment right to Due Process of law in that it created an improper presumption and relieved the State of the burden of proof of intent, an essential element of the offense of murder under Georgia law.

Conclusion 8

TABLE OF AUTHORITIES

Cases

Davis v. State, 237 Ga. 279, 227 S.E.2d 249 (1976) 4

In Re Winship, 397 U.S. 358 (1970) 4

Morisette v. United States, 342 U.S. 246 (1952) 5

Mullaney v. Wilbur, 421 U.S. 685 (1975) 5

Patterson v. New York, 432 U.S. 197 (1977) 4

Sandstrom v. Montana, 442 U.S. 510 (1978). 5,7,8

Strickland v. State, 247 Ga. 219, 275 S.E.2d 29, cert. denied, ___ U.S. ___, 102 S.Ct. 365 (1981). . . . 3

United States v. United States Gypsum, 438 U.S. 422 (1978) 5

Constitutional Amendments

Fourteenth Amendment 2,4,5

Statutes

Georgia Code Ann. §26-1101 2,4

Georgia Code Ann. §50-127 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-

ROBERT WILLIAM STRICKLAND,

Petitioner,

v.

WALTER D. ZANT, Warden,

Georgia Diagnostic Center,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF BUTTS COUNTY, GEORGIA

Petitioner, Robert William Strickland, prays that a writ of certiorari be issued to review the judgment of the Superior Court of Butts County, Georgia, entered on April 5, 1982. Application for certificate of probable cause to appeal was denied by the Supreme Court of Georgia on May 25, 1982.

CITATIONS TO OPINIONS BELOW

Application for certificate of probable cause to appeal was denied by the Supreme Court of Georgia on May 25, 1982. The order of the Supreme Court of Georgia and the unreported opinion of the Superior Court of Butts County are set out in Appendices A and B respectively.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3), Petitioner having asserted below and asserts in this Court deprivation of rights secured by the Constitution of the United States.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves the following provisions of the Code of Georgia, the texts of which are set out in Appendix C hereto:

Georgia Code Ann. §26-1101

Georgia Code Ann. §50-127

QUESTION PRESENTED

Whether the state trial court's charge to the jury at the guilt/innocence phase of Petitioner's trial violated Petitioner's Fourteenth Amendment right to due process of law in that it created an improper presumption and relieved the State of the burden of proof of intent, an essential element under Georgia law of the offense of murder.

HOW THE ISSUE WAS RAISED BELOW

Petitioner's state Petition for Writ of Habeas Corpus filed in the Superior Court of Butts County, Georgia, pursuant to Ga. Code Ann.§50-127 raised the constitutional issue addressed in this petition. The habeas corpus court considered the merits of

the issue and found against Petitioner. The constitutional issue was raised again on application for certificate of probable cause to appeal in the Supreme Court of Georgia which denied the application.

STATEMENT OF THE CASE

Petitioner Robert Strickland was convicted on June 25, 1980 in the Superior Court of Hall County, Georgia, of three (3) counts of murder and three (3) counts of aggravated assault. He received the death penalty on each of the three counts of murder, and consecutive ten (10) year sentences on each of the three counts of aggravated assault. The judgment of the trial court was affirmed by the Supreme Court of Georgia. Strickland v.State, 247 Ga. 219, 275 S.E.2d 29 (1981). Certiorari was denied by this Court, Strickland v. Georgia, __ U.S. __, 102 S.Ct. 365 (1981).

On November 30, 1981, Petitioner filed a petition for writ of habeas corpus in the Superior Court of Butts County, Georgia; that petition was amended on December 7, 1981. The petition for writ of habeas corpus was denied on April 5, 1982. An application for certificate of probable cause to appeal was denied by the Supreme Court of Georgia on May 25, 1982.

REASON FOR GRANTING THE WRIT

THE STATE TRIAL COURT'S CHARGE TO THE JURY AT THE GUILT/INNOCENCE PHASE OF PETITIONER'S TRIAL VIOLATED PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF LAW IN THAT IT CREATED AN IMPROPER PRESUMPTION AND RELIEVED THE STATE OF THE BURDEN OF PROOF OF INTENT AN ESSENTIAL ELEMENT OF THE OFFENSE OF MURDER UNDER GEORGIA LAW.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that the State, in a criminal prosecution, must prove beyond a reasonable doubt every element necessary to constitute the crime charged. In re Winship, 397 U.S. 358 (1970); Patterson v. New York, 432 U.S. 197 (1977). Under Georgia law, intent is an essential element of the crime of murder. Ga. Code Ann. §26-1101; Davis v. State, 237 Ga. 279, 227 S.E.2d 249 (1976).

The critical portion of the jury charge given at the guilt/innocence phase of Petitioner's trial, concerning the essential element of intent was as follows:

> Now, a crime, under the laws of our State, is a violation of the statute or statutes of this State in which there is union or joint operation of both intention to commit the crime and some act done in furtherance of that intention.
>
> I charge you that every person is presumed to be of sound mind and discretion, but that this presumption may be rebutted. I charge you that you may infer that the acts of a person of sound mind and discretion are the product of his will, and you may infer that a person of sound mind and discretion intends the natural and probable consequences of his act. Now, whether or not you make any such inference is a matter solely within the discretion of the jury. (T.Trial at p. 1047).

Since intent is an element of the offense of murder, "it follows that the trial court may not withdraw or prejudice the issue by instruction that the law raises a presumption of

intent from an act." Morisette v. United States, 342 U.S. 246, 274 (1952); See also, United States v. United States Gypsum, 438 U.S. 422 (1978). A jury instruction is invalid when it creates a presumption which acts to shift the burden of persuasion of an element of the crime away from the prosecution and acts to place the burden of disproof of the element upon the accused. Mullaney v. Wilbur, 421 U.S. 685 (1975); Sandstrom v. Montana, 442 U.S. 510 (1979).

In Sandstrom v. Montana, supra, the Court found defective a jury charge that "the law presumes that a person intends the ordinary consequences of his voluntary acts," 442 U.S. at 513, in that it violated the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt.

The issue of Petitioner's intent was seriously in dispute at Petitioner's state court trial. From the outset, Petitioner's trial counsel recognized Petitioner's severe mental illness as the overriding issue in the case.

Trial counsel had known Petitioner for a period of twenty (20) years prior to his appointment as Petitioner's trial counsel; throughout this time, Petitioner had suffered from mental illness (T. Habeas Corpus 23-24). Trial counsel's representation of Petitioner began on the day after Petitioner's arrest. At this first conference, it became apparent to Petitioner's trial counsel, that due to Petitioner's mental illness, Petitioner did not even know why he was under arrest. (T. Trial 330-332).

Petitioner was at no time able to communicate rationally with his attorney and was not able to assist in anyway in preparing his defense (T. Trial 326-329).

All four (4) psychiatrists who examined Petitioner prior to trial (including two state appointed psychiatrists),

found him to be suffering from serious mental illness.

Expert witness, Dr. Alfred Agrin, diagnosed Petitioner as suffering from schizophrenia, chronic indifferent type. Dr. Agrin had been treating Petitioner for over four years prior to Petitioner's commission of the offenses involved in this case. [1] (T. Trial 944-945).

Dr. Agrin testified that Petitioner suffered from irrational and disorganized thoughts, delusions, and hallucinations. Petitioner suffered from irrational, extreme thoughts of violence with homicidal and suicidal impulses. (T. Trial 945).

Expert witness, Dr. James Harvey Beall, Jr., also diagnosed Petitioner as suffering from psychosis, probably schizophrenia. (T. Trial 965). Dr. Beall had begun treating Petitioner over a year prior to the offense (T. Trial 965).

Dr. Beall testified that Petitioner was delusional, and that Petitioner felt he was being pursued by the C.I.A.; Petitioner was fearful that he was being drugged or poisoned by the C.I.A.. (T. Trial 977). Petitioner also suffered from delusional thoughts concerning religion and was frightened by the devil. (T. Trial 977-978).

Expert witness, Dr. Edward Matthew Eichler, examined Petitioner pursuant to an order of the trial court (T. Trial 994). Dr. Eichler found Petitioner to suffer from extreme mental disorder, possibly schizophrenia. (T. Trial 995). Petitioner was psychotic and in need of treatment. (T. Trial 995).

Dr. Eichler further testified that Petitoner's consciousness was probably completely clouded over by his psychotic rage. (T. Trial 997). Dr. Eichler also testified concerning Petitioner's delusion that he was being pursued by the

---

[1] Petitioner had absolutely no prior criminal record. (T. Trial 1029).

C.I.A. (T. Trial 999).

Expert witness, Dr. Ilhan Ermutlu, examined Petitioner pursuant to an order of the trial court (T Trial 1030). Dr. Ermutlu, although making no specific diagnosis, testified that Petitioner suffered severe emotional disorder.

The evidence of Petitioner's mental disorders clearly placed into issue Petitioner's ability to formulate the requisute intent. The trial court's jury instruction creating a presumption of intent relieved the State of its burden to prove this essential element.

The state habeas corpus court found no constitutional error in the trial court's instruction to the jury because the jury was "told the presumption could be rebutted." (Order, Habeas Corpus, Appendix B at p. 15).

The fact that the jury in Petitioner's case was instructed that the presumption of intent may be rebutted does not affect the invalidity of the charge. Although the state court may be the final authority on the legal effect of a presumption in the state, the state court is, "not the final authority on the interpretation which a jury could have given the instruction." Sandstrom v. Montana, supra, 442 U.S. at 516-517.

In Sandstrom v. Montana, supra, this court found that given the common definition of "presume" as "to suppose to be true without proof", and given the lack of any qualifying instructions by the trial court as to the legal effect of the presumption as given, there was a possibility that the jury may have interpreted the instruction in either of two ways:

> First, a reasonable jury could well have interpreted the presumption as 'conclusive', that is, not technically as a presumption at all, but rather as an irrebuttable direction by the court to find intent once convinced of the facts triggering the presumption. Alternatively, the jury may have interpreted the instruction as a direction to find intent upon proof of the defendant's

> voluntary actions (and their 'ordinary' consequences), unless the defendant proved the contrary by some quantum of proof which may well have been considered greater than 'some' evidence -- thus effectively shifting the burden of persuasion on the element of intent.
> 444 U.S. at 517 (emphasis in original).

In Petitioner's case, as in Sandstrom, the trial court gave no guidance on how the rebuttal of the presumption of intent could be accomplished or what quantum of proof by Petitioner was necessary to accomplish the rebuttal. In Petitioner's case, as in Sandstrom, a reasonable jury may have given the instruction an unconstitutional effect.

WHEREFORE, for the reasons shown, a writ of certiorari should issue to review the judgment and opinion of the Superior Court of Butts County, Georgia.

Respectfully submitted,

Joseph M. Nursey
Millard C. Farmer
ATTORNEYS FOR PETITIONER

15 Peachtree St., Suite 831
Atlanta, Ga. 30303

(404) 688-8116

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-

ROBERT WILLIAM STRICKLAND,

Petitioner,

v.

WALTER D. ZANT, Warden,
Georgia Diagnostic and
Classification Center,

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF BUTTS COUNTY, GEORGIA